

**SANDIA MOUNTAIN COALITION**

**PRESENTATION TO THE COMMITTEES**

**ON**

**ENERGY AND NATURAL RESOURCES**

**AND**

**INDIAN AFFAIRS**

**UNITED STATES SENATE**

April 24, 2002

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**SANDIA MOUNTAIN COALITION**  
**TESTIMONY BEFORE THE COMMITTEE ON ENERGY**  
**AND NATURAL RESOURCES**  
**AND**  
**THE COMMITTEE ON INDIAN AFFAIRS**  
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**Mr. Chairman, Senator Bingaman, Senator Domenici, Senators:**

We are deeply grateful for the opportunity which you have given the Sandia Mountain Coalition to appear before these Senate Committees on an issue that is so vitally important to our members and all residents of Bernalillo County and the City of Albuquerque, New Mexico. We hope that our testimony on S 2018 will assist you in formulating a permanent solution to the Sandia Pueblo Claim.

**INTRODUCTION**

The Sandia Mountain Coalition (hereinafter ASMC®) has always sought a fair settlement of the claim of the Pueblo of Sandia to land on the West face of Sandia Mountain. Its members share the Pueblo's reverence for the mountain, and its fears that its Wilderness will be overused and overdeveloped. It continues to believe that the Sandia claim is without merit, but is willing to make compromises in order to resolve a controversy which has existed for 16 years, creating uncertainty and animosity and exhausting financial resources.

The SMC will accept a settlement which includes the following:

- Clear title for all private property within the exterior boundaries of the claim
- Dedicated access to Bernalillo County for roads and both present and future roads and utilities.
- Guaranteed public access to the Forest and Wilderness within the claim area.
- Permanence.

The Coalition continues to work closely with Bernalillo County in achieving its settlement goals. It has been represented by the same attorneys, and has submitted joint analyses of proposed settlement documents and legislation.

The SMC and Bernalillo County generally support S 2018, introduced by Senator Jeff Bingaman. The comments which they have submitted reflect their opinion that there are still remaining ambiguities in the bill which may lead to future litigation and controversy, thwarting their goal of achieving a permanent settlement. They have always looked beyond their immediate interests in their concern that a settlement also address the public interest and not create precedents which might have negative impacts on public and private land throughout New Mexico and the United States..

#### 1. What Is the Sandia Mountain Coalition?

The Sandia Mountain Coalition (hereinafter **ASMC@**) is an unincorporated association of property owners whose land is within the external boundaries of the claim of the Pueblo of Sandia to approximately 10,000 acres of land in the Cibola National Forest, which includes 8,900 acres in the Sandia Mountain Wilderness. The claim originally also included 655 acres of private land, but the Pueblo has excluded the private property from its claim in the litigation which it filed and in the settlement which it signed with the United States Departments of the Justice, Interior and Agriculture and the Sandia Peak Tram Company.

The subdivisions of Sandia Heights North and Tierra Monte, in Bernalillo County, and Evergreen Hills, in Sandoval County, are within the external boundaries of the claim. About 85% of the property owners in these subdivisions are members of the Coalition. Evergreen Hills Subdivision is located to the North of Tierra Monte, over the Sandoval County line. It has no utilities, and the few houses on its lots are served by on site water and power and cellular telephones. The SMC represents the general interests of Evergreen Hills property owners; it does not represent them in efforts to attain an extension of utilities to their properties.

There is one remaining large inholding in Sandoval County, the Piedra Lisa Tract, which is now owned by Guy Riordan. The also represents Mr. Riordan concerning his general interests as an inholder within

the Claim; it does not represent him concerning his efforts to attain road and utility access to his property. The SMC's membership also includes recreational users of the public land at issue in the claim and Albuquerque area citizens.

Property owners in the subdivisions represented by the Coalition have had difficulty selling their homes and/or vacant property. They have had to accept lower sales prices than those received by owners of comparable property in Sandia Heights South, outside the exterior boundaries of the claim. The owners are aging and would like flexibility concerning the disposition of their property which they will not completely enjoy until all clouds are removed from their land in a permanent settlement of this controversy.

## **II. Legislative Initiatives and S 2018**

The SMC and Bernalillo County support many of the amendments made to the original settlement reached in mediation, as reflected in S 2018, but still has concerns about some of its provisions.

The SMC urged the New Mexico Congressional Delegation to introduce legislation to settle the Sandia claim once and for all. The SMC continues to believe that the claim is without merit, but believes that the Pueblo's longstanding cultural use of the claim area should be recognized. On December 11, 2001, it informed former Regional Forester of the Southwest Region of the United States Forest Service, Eleanor Townes, and a member of New Mexico Senator Pete Domenici's staff, in a meeting held to try to resolve the outstanding settlement issues, that it preferred a settlement which might effect a *land readjustment* or *partition* of the claim area, providing for a purchase or exchange in which the Pueblo might acquire additional acreage from the Forest Service adjacent to its existing boundaries.

It also has advocated that the Pueblo might acquire a property interest in the nature of a *conservation easement* in the entire Claim Area, which could limit future development of the Area, similar to that acquired by the Santa Clara Pueblo in the Baca Location No. 1, now part of the recently created Valles Caldera National Monument in New Mexico..

Anita Miller also briefly summarized this memorandum in a meeting with Senator Bingaman a few weeks later which was held to introduce Senator Bingaman's original draft of what is now S 2018, and presented it to his staff at that meeting. A copy of the memorandum is attached to this Testimony as Appendix 1.

The SMC would also support giving the Pueblo of Sandia the opportunity to assert its claim in the U.S. Claims Court, through a *reopening* of the ICCA, and receive compensation in the event that it is successful. Congress enacted a law which enables the Pueblo of Isleta to follow this procedure. These options are not currently on the table, however.

In January, 2002, New Mexico Senator Jeff Bingaman contacted the SMC and invited its representatives to meet with him to review a bill which he had drafted. The bill reflected the settlement legislation which was drafted during the mediation. The SMC was asked to comment on the bill. Many of its suggestions are reflected in S 2018, introduced by Senator Bingaman in March. We generally support the bill.

- We are gratified that the bill now will incorporate a map, which will be referred to whenever a specific reference is made to property within the T=uf Shur Bien Preservation Trust Area.
- We are glad that the specific rights-of-way which will be dedicated by the Pueblo to Bernalillo County and to the Forest Service are specifically described in the bill.
- We appreciate the addition of Aparallel@ language in Section 4 (a), which Arecognizes and protects in perpetuity@the Pueblo=s rights and interests in and to the Area, and the public=s longstanding use and enjoyment of the Area, although we would have preferred that the public=s Arights and interests in and to@the Area would have been recognized as well.
- We are pleased that the provisions regarding the criminal and civil jurisdiction of the Pueblo have been clarified., although still have some concerns with the extent of this jurisdiction and the precedents it might set
- We are relieved that the Pueblo=s jurisdiction over hunting and trapping has been reduced and will have more oversight by the New Mexico Game and Fish Department.
- We particularly like the provision which authorizes an exchange of private land acquired by the Pueblo for other Forest land, in order to eliminate Apockets@of Indian trust land within the Forest and Wilderness..

We continue to have the following major concerns about S 2018:

- We would like a definition of the word Atrust@as used in the Title of the Act and the Title of the Area, distinguishing it from the usual meaning of trust as it applies to the relationship between the Department of the Interior and Indian tribes.
- We would prefer that the Pueblo did not have a Aveto power@ (right to Awithhold consent@) over new uses in the Area. Giving Bernalillo and Sandoval Counties veto powers which have never been requested does not resolve that issue. We would accept a definition of what constitutes Anew uses@ and what Anew uses@ might be exceptions from the veto power, e.g. Is a handicapped trail a Anew use?@

- Would the construction of a corral in order to quarantine diseased deer by a ~~A~~new use?
- We would like to see the Settlement Agreement and Management Agreement, which are now incorporated into the bill, be ~~A~~decoupled. The bill should be passed first; then the other documents can be amended to be made consistent. It is alleged ~~A~~ambiguities in Pueblo Grant documents which resulted in this controversy in the first place; to incorporate inconsistent documents in settlement legislation would create new ambiguities before the settlement even got off the ground..
- We would like to see all parties reimbursed for the expenses incurred during the pendency of this matter, including attorneys fees. There is precedent for such reimbursement in the matter which involved the claim of the Santa Domingo Pueblo against public land and private land owned by the Dunagan family. The Dunagans were reimbursed..
- We would like to see the bill specifically vacate the District and Court of Appeals Opinions in the Sandia Claim litigation and the withdrawal of the Leshy Opinion.

In the comments which we submitted to Senator Domenici, which are included with this testimony as Appendix 2, there are other suggestions for improving the bill, some of which are of greater concern to others who will offer testimony before the Senate Committees. We hope that S 2018, with at least some of our additional suggested amendments, will be passed by Congress, and that a final settlement of the Sandia Claim will be achieved.

### **III. Institutional History of the Claim, from Anita Miller's Perspective**

I am one of a few residents of Sandia Heights North Subdivision who has been actively involved in the claim issue since it was first made public in 1986. I have outlasted two other co-chairs of the SMC, two other Bernalillo County Commissioners, at least two Secretaries of Agriculture, Regional Foresters, two Cibola National Forest Rangers, two Secretaries and Solicitors of the Department of the Interior, two United States Representatives, and at least three Governors of the Pueblo of Sandia who have been actively involved in the case over the years.

My husband and I purchased our lot in Sandia Heights North, at 223 Spring Creek Lane, in the late 1970's, exchanging a lot which we had purchased in 1975 in Sandia Heights South for the lot in Sandia Heights North. We completed building our home in 1981. We received title insurance for our lot. We recognized that we had to access our lot over the existing Sandia Pueblo Reservation, and that our water supply came from a well located on the Reservation, as well.

We were not aware that our road and utility access was covered in a ~~A~~business lease between the Pueblo, and was not a recorded easement. We were also not aware that the Forest Service had never acquired an easement over a portion of the Pueblo of Sandia which accessed the neighboring Tierra

Monte and Evergreen Hills Subdivisions, the Juan Tabo and La Cueva Picnic Areas, and the La Luz and Piedra Lisa Trails. At no time were we told that the Pueblo of Sandia claimed land in Sandia Heights North.

It is particularly relevant, in the context of the discussion below of the Pueblo's failure to assert its claim prior to 1983, that the Pueblo, by giving the Sandia Peak Tram Company access over existing Pueblo land and a lease to construct a well on Pueblo land to provide water to the Sandia Heights subdivisions, actually enabled development to occur. Had it asserted its claim to that land in a timely manner, the subdivision would never have been built, and I and other members of the SMC would not have had to become involved in this matter.

Similarly, the Pueblo enabled the development of Tierra Monte Subdivisions by granting an easement to local electric and telephone utilities through Pueblo land. It never has given permission to extend this easement to serve Evergreen Hills, however. The Pueblo certainly had notice that something was going on which was inconsistent with any historic entitlement it might have had to the land being developed within the claim area.

In the early 1980's, the Tram Company attempted to trade land which it owned in the foothills of the City of Albuquerque, south of Sandia Heights, for land in the Cibola National Forest, known as La Cueva, to the West of Sandia Heights North. This trade would have provided more convenient access to Sandia Heights North, Units 2 and 3, and would also have opened contiguous land to development. The Sierra Club and other environmental groups opposed the exchange and the development which would have resulted. It contacted the Pueblo of Sandia and urged its opposition to the exchange, as well. The rest is history.

The Pueblo then sought assistance from the Department of the Interior, and retained historians and anthropologists who concluded that the Pueblo not only should have received the La Cueva tract when it received its patent from the United States, but the additional acreage it subsequently claimed on the west face of Sandia Mountain, including the private inholdings.

A draft opinion, written by an Assistant Solicitor in the Washington office of the DOI, Tim Vollmann, concluded that the Pueblo's patent from the United States should have included the land claimed was sent to the Forest Service for review. The draft opinion concluded that the Secretary of the Interior should correct the Pueblo's patent to include the area claimed. The Forest Service circulated the report to all property owners within the claim area, among other affected parties.

The property owners within the three subdivisions organized the SMC, and proceeded to hire historian Frank Wozniak and Anthropologist Matthew Schmader (now anthropologist for the City of Albuquerque) to research the historic basis for the Pueblo claim, as well as to physically inspect the landmarks noted in the historical documents reviewed. They concluded that the claim was without merit. The SMC retained Attorney Carol Dinkins, former Deputy U.S. Attorney General for Natural

Resources, of the Houston firm of Vinson and Elkins, to represent it, and was joined by Bernalillo County in its opposition to the claim. Bernalillo County was concerned with the impact which the claim, if successful, would have on County jurisdiction, revenues and services, and on County citizens who would find themselves in Indian Country.®

New Mexico Senator Pete Domenici and then-Congressman Manuel Lujan also opposed the claim. The Forest Service had done its own historic research and concluded that the claim was without merit.

In 1987, representatives of the SMC and Bernalillo County, along with members of Senator Domenici and Representative Lujan's staff, met with then Secretary of the Interior Donald Hodel in Washington. Solicitor Leshy, as well as representative of the BIA were in attendance. The SMC and County made a presentation and submitted historic and anthropological reports.

On December 14, 1988, then-Solicitor Ralph Tarr issued an Opinion concluding that the Sandia Claim was without merit. We were told that Solicitor Tarr conducted his own historical research and wrote the opinion himself, but cannot substantiate this.

#### **IV. The Tarr Opinion**

The SMC and Bernalillo County supported the Tarr Opinion, which it believed correctly addressed the merits of the Pueblo of Sandia's claim and jurisdictional issues involving the failure of the Pueblo to assert the claim in a timely manner. It believed that this Opinion would end the controversy.

The Tarr Opinion cited the Pueblo's original Spanish grant documents, still in the Pueblo's possession, as well as documents describing the survey of the Pueblo's boundaries by the United States in 1859 and concluded that the eastern boundary of the Pueblo was basically correct and should not be changed. It refuted the Pueblo's evidence to the contrary, finding it inconclusive in the context of all of the documents comprising the Sandia Pueblo Grant.

Solicitor Tarr also reviewed the Pueblo's failure to assert its claim to the west face of Sandia Mountain before the Pueblo Lands Board, as well as before the Indian Claims Commission, fora created by Congress for the settlement of outstanding Indian claims. He stated that the Pueblo had been on notice about federal and private actions taken with respect to the land claimed, such as the reservation of the land for a national forest, the actual forest designation, the designation of the Sandia National Wilderness in 1979 and the development of the subdivisions, but had failed to assert its claim.

Solicitor Tarr concluded that the claim was barred by the Quiet Title Act, 28 U.S.C. Section 409, since it had not been brought within the 12 year period, after notice of the claim, for bringing asserting claims against the United States involving real property. He particularly cited Navajo Tribe v. State of New Mexico, 809 F. 2d 1455 (10<sup>TH</sup> Cir. 1987) in concluding that the claim was barred since the Pueblo had not asserted it under the Indian Claims Commission Act, 25



U.S.C. Section 70. (AICCA) He stressed that the ICCA was intended to dispose of Indian claims which existed before 1946 once and for all, including claims before administrative agencies. The sole remedy available to tribes was monetary damages. Although the Pueblo's counsel had justified the Pueblo's failure to assert a claim under the ICCA by alleging that money could not compensate the Pueblo for the loss of its land, the Tarr Opinion concluded that the Pueblo had no other remedy.

Tarr also concluded that the Secretary of the Interior's authority under the Federal Land Policy and Management Act, (FLPMA), 43 U.S.C. Section 1746, passed in 1976, to "correct patents or documents of conveyance relating to the disposal of public lands where necessary in order to eliminate errors" could not be used ...to revive stale historical claims which Congress has expressly barred by Section 12 of the ICCA. (emphasis added). The authority to correct errors also did not extend to a claimed misreading of the scope of a grant, which was the issue before Interior in the Sandia Pueblo Claim.

## 5. Litigation

In 1994, during the first Clinton Administration, the Pueblo requested that Secretary of the Interior Bruce Babbitt withdraw the Tarr Opinion. Solicitor Leshy studied the matter and recommended that it not be withdrawn. The Pueblo sued the Department of the Interior seeking to compel the Department of the Interior to correct its patent, and to restrain the Department of Agriculture from interfering with the "correction" of the Pueblo's boundaries. Pueblo of Sandia v. Bruce H. Babbitt, et al., Civ. No. 94-2624, July 20, 1998. The Pueblo included the private inholdings, including the subdivisions, in the map depicting the claim area which was included with the complaint. When the SMC and Bernalillo County successfully moved to intervene in the case, the Pueblo amended its complaint to exclude the private land from its claim.

## The Hordes Report

The SMC and Bernalillo County continue to believe that the historic analysis of the Pueblo's claim by Stanley Hordes, Ph. D. is correct.

To reinforce its position in the litigation that the Pueblo's claim was without merit, the Department of Agriculture retained historian Stanley Hordes, Ph.D., who had formerly been the New Mexico State Historian, to do additional research. Dr. Hordes did exhaustive research finding additional documents from the Spanish Colonial Period which supported his conclusion that the Pueblo was granted a "formal" Pueblo of four square leagues, and that the northern and southern boundaries of the Pueblo were extended to make up for an abbreviated western boundary, established at the Rio Grande to avoid conflicts with grants to Spanish settlers on the other side of the river.

Dr. Hordes noted that "sierra madre" referred to a mountain range, rather than the crest of a mountain, in the context of the language of the colonial period. He also noted that the translator for the United

States after the acquisition of the Mexican Territory by the United States, , David Whiting, in his translation of the original grant documents in the possession of the Pueblo, substituted totally different boundary landmarks than those described in the Spanish grant documents, actually ripping words out of the original documents. He used the term *Amain ridge*, rather than *Asierra madre* in the description of the eastern boundary of the Pueblo.

While not going into detail on the conclusions of the Hordes Report, suffice it to say that he states that the Pueblo's claim is based on taking the Whiting mistranslation out of context. While all other boundary calls refer to points which are *Afacing* specific landmarks, the translation states .....and on the East the main ridge *B*the crest of the mountain, rather than the Sierra Madre *B*the mountain range. The original documents had also omitted the word *Afacing* from the Eastern boundary, although Dr. Hordes concludes that in the context of both the grant document and the *AAct of Possession*, through which the Pueblo took possession of its grant, the Eastern boundary was intended to be one league from the center of the Pueblo's church, which would be in the Sandia foothills, rather than at the crest of the mountain.

Dr. Hordes also concluded that the errors in both the Whiting mistranslation of the original Pueblo of Sandia grant documents as well as the Clemens survey resulted in the Pueblo receiving about 2,500 acres more than it was supposed to receive, rather than too little land!

### **Judge Greene's Opinion**

On July 20, 1998, Judge Harold Greene (deceased) of the United States District Court for the District of Columbia cited the trust responsibility of the Department of the Interior for Indian Tribes, and found sufficient ambiguity in the original grant documents to invoke the Canon of Indian Law which holds that ambiguities in documents must be decided in favor of the tribes. He vacated the Tarr Opinion pursuant to the Administrative Procedure Act, 5 U.S.C. Section 551, et seq., and remanded the case to the Department of the Interior for *Agency action consistent with this Opinion*. The SMC and Bernalillo County filed a Notice of Appeal in the Court of Appeals for the District of Columbia. The City of Albuquerque successfully moved to file an appeal as *amicus curiae*. The Department of Justice, representing both the Departments of the Interior and Agriculture, filed a *Aprotective appeal*.

The Court of Appeals then ordered that the parties mediate the case.

### **6. Mediation and Settlement Agreement**

The SMC, Bernalillo County and the City of Albuquerque were gratified that mediation resulted in an the achievement of three of its four goals. Private title and present and future utility access was guaranteed, as was public access to the forest and wilderness areas. The issue of permanence continues to divide the SMC, the County and the City from the other parties, however.

The Department of Justice convened a mediation process in late 1998, to include representatives of the

Departments of Justice, Agriculture (specifically Forest Service officials at the Regional and Cibola National Forest level) and Interior, (specifically, BIA officials and Tim Vollmann, who authored the original draft Opinion that set this entire matter in motion, who was now the Regional Solicitor in New Mexico), the Sandia Peak Tram Company, the SMC, Bernalillo County, and the City of Albuquerque. A mediator who had experience in Indian issues was selected with the concurrence of all of the parties.

The parties to the mediation all agreed that the Pueblo's access to the claim area for ceremonial and cultural purposes should not be impeded by burdensome Forest Service regulations and permitting procedures. All parties also agreed that the claim area should not be developed any further, considering its heavy recreational use as Albuquerque's back yard. As the mediation progressed, the parties also participated in the drafting of a Management Agreement, which would govern the management of the claim area if a settlement were approved by the parties.

Concepts which the SMC thought had been agreed to by all parties during discussions would look a little different when they were actually written in settlement drafts.

As negotiations proceeded and the Justice Department produced a draft Settlement Agreement and a draft of legislation to implement the settlement, the SMC, Bernalillo County and the City of Albuquerque concluded that the wording of these documents gave the Pueblo far greater authority over the Claim Area than was warranted, considering that they continued to believe that the Pueblo's claim to the Area was without merit.

The Pueblo insisted on a sense of ownership of the Area, which was reflected by language granting the Pueblo rights in and to the Area, while merely respecting and assuring public use of the Area. The drafts gave the Pueblo a veto power over new uses proposed in the Area by the Forest Service, which could not be appealed by the public. It would be compensated as if it owned the Area in fee simple, if the United States were to violate the Settlement Agreement.

The Pueblo was given unprecedented and confusing civil and criminal jurisdiction over members of other Indian tribes, as well as jurisdiction over recreational and sport hunting and trapping, in this heavily used area near private homes, by all Native Americans in the Area, not merely ceremonial and cultural hunting and trapping by its own members.

The SMC, Bernalillo County and Albuquerque left the mediation in frustration in July, 1999 when their suggested amendments to draft documents were ignored. It appeared to us that the documents tilted ownership of the Area excessively in favor of the Pueblo. It appeared to us that Tim Vollmann was representing the Pueblo, rather than the Department of the Interior. It appeared to us that there was political influence at play, given the involvement of a political advisor to the Secretary of Agriculture.

The remaining parties executed a Settlement Agreement and Management Agreement. A draft Bill reflecting the settlement was also circulated. The SMC, County and City commented on the documents, in submittals to the Department of Justice and in the press and local media. They have continued to

oppose the original Settlement Agreement terms.

The SMC and County have been repeatedly criticized for refusing to accept the original Settlement, since private property rights and county jurisdictional issues were addressed in the settlement documents. As stated above, they have not accepted the original documents because they believe that some of the provisions and wording of the documents can lead to ambiguities. which may lead to future litigation, thwarting a permanent settlement. Their specific comments are included with this presentation.

## **VII. The Court of Appeals Remand**

The SMC, Bernalillo County and Albuquerque continued their appeal in the D.C. Circuit, which, on November 17, 2000, remanded the case to the Department of the Interior, finding that Judge Greene's remand to the Department of the Interior was not a **final order** and that it therefore did not have jurisdiction to decide the case until a **final** decision was made by the Department of the Interior which could then be appealed first in the District Court.

The Court of Appeals Opinion ordered the Department of the Interior, on remand, to **reconsider** the facts in the record and also reconsider the Tarr Opinion position that it lacked legal authority to issue a corrected survey. It allowed Interior to re-open the record and solicit additional evidence from the public. It did not comment on the merits of the case; it merely stated that **If** Interior does issue a corrected boundary, it must commission a survey to determine where the **main ridge** of the Sandia Mountain lies.

## **VIII. The Leshy Opinion**

The SMC and Bernalillo County do not believe that the Opinion of former Solicitor of the Department of the Interior, John Leshy, is a correct analysis of the history of the Pueblo and of the statutes and cases governing Indian claims. We do not believe that his **review** of the record should have concluded that the **main ridge** of Sandia Mountain constituted the Pueblo's eastern boundary, continuing to believe that the original Sandia Pueblo grant documents intended that the eastern boundary be one league to the east of the Pueblo church, **facing** the **Sierra Madre**, or Sandia Mountain Range.

We also do not believe that Congress intended that the **general authority** of the Secretary of the Interior to resurvey boundaries should offer Indian tribes an **end run** around the Indian Claims Commission Act and Quiet Title Act, allowing the assertion of time-barred claims against the United States. We cannot accept Solicitor Leshy's apparent conclusion that a resurvey by the Department of the Interior could change the boundaries of a National Forest and National Wilderness created by an Act of Congress.

The Department of the Interior gave all parties a few weeks after the announcement of the Court of Appeals decision to make additional submittals. The SMC, Bernalillo County and Albuquerque asked

for additional time to add to the record, On January 19<sup>th</sup>, 2001, however, as Secretary of the Interior Babbitt was leaving office, a new Opinion, written by Solicitor Leshy was released.

On December 5, 2001, Solicitor Leshy had issued an opinion in an unrelated boundary dispute between the Santa Ana and San Felipe Pueblos, stating withdrawing Solicitor Tarr's Opinion as it related to both the Quiet Title Act and the ICCA as bars to the authority of the Secretary of the Interior to resurvey boundaries and correct mistakes of the past. He relied on Pueblo of Taos v. Andrus, 475 F. Supp. 359 (D.D.C. 1979) which upheld the exercise of the Secretary's authority, in the context of a post 1946 Pueblo claim. He discounted the Navajo Tribe case, stating that it had nothing to do with correction of surveys by the Department of the Interior, and therefore was not on point.

It should be noted that the United States Supreme Court recently denied certiorari in Spirit Lake Tribe v. State of South Dakota, et al., 262 F. 3d 732 (8<sup>th</sup> Cir. 2001). The Eighth Circuit held that Indian claims against the United States for land which would extend reservation boundaries had to be brought within the time limitations of the Quiet Title Act, with the time beginning to run when the tribe first had notice of the claim. Solicitor Leshy could lead us to conclude that the Spirit Lake Tribe should have sought a boundary correction from the Secretary of the Interior, rather than bringing a quiet title action against the State of North Dakota, private parties and the United States, in order to avoid the Quiet Title Act.

In the January 19 Opinion, Solicitor Leshy withdrew the rest of the Tarr Opinion, stating that there is no clear evidence that Pueblos were to be four square leagues, while never refuting evidence which Dr. Hordes had presented that the formal Pueblo was the Arule, and that Indian Pueblos which were larger than four square leagues, unlike the Pueblo of Sandia, did not have their original grant documents, and had established their boundaries by parol evidence and other means.

Solicitor Leshy concluded that Congress intended the Eastern boundary of the Pueblo to be the main ridge of Sandia Mountain when it confirmed the Whiting survey. He blames the current erroneous boundaries on the incompetence of the surveyor, Clements. He neglects to mention that Whiting, himself, signed off on that survey!

Solicitor Leshy does not mention the Navajo Tribe case in reference to the specific facts of the Sandia claim, but once again states that the ICCA does not specifically address the authority of the Secretary of the Interior to correct surveys, including those involving Indian boundaries. He gets around the fact that a correction of this survey would impact the boundaries of federally designated wilderness by saying that because of the survey error, the Pueblo never received what Congress intended, and the land in question never really went into the National Forest or Wilderness.

Secretary Babbitt, in his cover letter to the Leshy Opinion, states that the resurvey called for by the Leshy Opinion will be delayed until November 15, 2002, which is the date which the Settlement Agreement, which we did not sign, goes into effect. He hopes we'll sign the Agreement.

The Leshy Opinion, if it were to remain in effect, could reopen every stale Indian claim in the United States. Requests by tribes to change their boundaries with national forests and wilderness areas could disrupt the entire statutory scheme concerning for the creation and management of public land. It should be withdrawn.

## **CONCLUSION**

The Sandia Mountain Coalition seeks a permanent legislative settlement of the Sandia Pueblo Claim which will recognize the legitimate rights and interests of all parties who are concerned with the claim. We hope that our testimony will receive serious consideration by the Committees as they review S 2018. We would like to get on with our lives, and to enjoy Sandia Mountain with the members of the Pueblo of Sandia as friends and neighbors, rather than as adversaries.

Thank you for the opportunity to present our position.